Minutes of Day 1 of the 99th meeting of the Board of the EHRC

23 November 2021 (10:00-12:00)

Virtual meeting

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Attending

Commissioners
Baroness Kishwer Falkner (Chairwoman); Caroline Waters (Deputy Chair); Suzanne Baxter; Jessica Butcher; Pavita Cooper, David Goodhart; Susan Johnson; Helen Mahy; Alasdair Henderson, Mark McLane, Lord Bernard Ribeiro; Dr Lesley Sawers; and Su-Mei Thompson.

Officers
Marcial Boo, Chief Executive Officer
Ben Coates, Chief of Staff
Cath Denholm, Chief Operating Officer
Melanie Field, Chief Strategy and Policy Officer
Jackie Killeen, Director of Regulation
Alasdair MacDonald, Director of Policy (item 7)
Callum MacInnes, Principal – Planning, Performance and Governance
Bill Malloy, Director of Finance, Procurement, Planning, Performance & Governance
Sarah Whelan, Senior Associate – Planning, Performance and Governance

Guests
Martyn Jones, Interim Chair - EHRC Wales Committee
Charles Ramsden – Government Equalities Office (GEO)

Observer
Ruth Doubleday, Senior Associate – Wales Committee Secretary

Minutes

1. Chairwoman's introduction

1.1 The Chairwoman welcomed attendees. She thanked Lord Ribeiro, at his last meeting, for his important contribution to the Board. Lord Ribeiro expressed his gratitude to Commissioners and staff for their kind messages and wished the Commission well.

2. Apologies for absence

2.1 No apologies were received.

3. Declarations of interest

3.1 No new declarations were made

4. Minutes and correspondence

4.1 The Board considered the minutes of the 20th October, 98th Board meeting.

4.2 The Chairwoman questioned the Government Equalities Office regarding the ongoing delay to the appointment of a Wales Commissioner. Charles Ramsden accepted that the delay was unfortunate and resulted from the number of bureaucratic stages that the appointment needed to go through.

4.3 The Chair of the Audit and Risk Assurance Committee advised that a new internal auditor had been secured and would be introduced to the Audit and Risk Assurance Committee at its 7 December meeting.

4.4 The Chairwoman advised that the Office for Students is undertaking a formal investigation into the University of Sussex and their treatment of Professor Kathleen Stock.

4.5 The Board approved the minutes of the meeting of 20 October as an accurate record.

4.6 The Chairwoman drew the Board's attention to the legal update report sent to them on 11 November, noting the Commission's Section 23 (Equality Act) agreement with Jaguar Land Rover, signed earlier in the year. The Board should keep abreast of the legal developments on this particular case, as its precedent may be challenged.

5. Actions arising

5.1 The Board reviewed the Actions Log.

5.2 The Board was advised that the Commission's social and sustainability responsibilities statement would be discussed at the People and Workspaces Committee meeting on 31 January and then come to the February Board meeting.

5.3 Regarding Board attendance at Scotland and Wales Committee meetings, Board members agreed to a planned rota that included allowance for substitute Commissioners if required.

Action: Governance team to put Scotland and Wales Committee meetings Board members' diaries as appropriate.

5.4 A typo was identified such that the stakeholder engagement review should take place in March 2022, not March 2021.

6. Chief Executive's strategic report

6.1 The Chief Executive introduced his report. The Commission's intervention with Yorkshire County Cricket Club was discussed. Board members agreed that this presented an opportunity for the Commission to promote equality and tackle discrimination in sport, particularly at the Commonwealth Games in Birmingham in 2022, which offered an opportunity for engagement.

Action: Director of Strategy to evaluate the opportunities that arise to enable us to include tackling racism in sport in the areas for the Commission to address in planning its future activity.

6.2 It was noted that we had not yet received a reply from the Financial Conduct Authority (FCA) on their consultation on diversity on company boards. The Commission's Director of Regulation would meet the FCA on 15 December and report developments at the Board's January meeting.

6.3 Board members asked about the artificial intelligence panel that took place in Wales in October. It was agreed that this would be shared with them and that future such events would be shared with the Board.

Action: Chief Strategy and Policy Officer to share the outcome of the panel with Board members.

Action: Governance team to share details of forthcoming Scotland and Wales events with Board members.

6.4 Board members were disappointed at the low rate of gender pay gap reporting amongst public sector organisations. They asked that the Commission use its powers more publicly and that the Government Equality Office speak to non-executive directors at public bodies to discuss pay gaps. They asked for a future Board discussion on reducing pay gaps.

Action: Charles Ramsden to contact Government Departments' Non-Executive Network to remind them of their duties to report their gender pay gap.

Action: Governance team to schedule a future Board discussion on the gender pay gap.

6.5 The Board asked that the Commission's Human Rights Tracker include international comparators as context, although it was accepted that the focus of the Tracker was on how the UK and Welsh governments were performing against their treaty obligations.

Action: Chief Strategy and Policy Officer to include international context in the Human Rights Tracker.

6.6 There was discussion of the Commission's staff networks, so that they would work effectively for staff to share experience and provide a channel of communication with senior management on issues of concern. It was important for terms of reference and expectations to be clear, and the Board welcomed a review of their operation in March 2022 with a Board discussion in April 2022.
Action: Governance Team to schedule a discussion at the April 2022 Board meeting.

7. Race Policy positions

7.1 The Board welcomed the good work that the Commission has undertaken to tackle race discrimination, and welcomed the establishment of a race support fund to provide financial assistance to the legal profession to support their cases on race discrimination.

7.2 The Board was clear that the Commission had specific statutory powers to enforce the Equality Act and that our approach should be grounded in law. It was important for all Board papers to include the relevant legal clauses to inform discussion.

7.3 There was discussion about the language used in the context of race issues, and acknowledgement that some terms had become politicised. The Commission therefore needed to be cautious in its use of language, only using the phrase 'institutional racism', for example, when the case in question clearly matched the criteria defined in the 1999 Macpherson report, as this was not a legally-defined term. It was important to be specific and evidence-based if any of our work refers to 'structural inequalities' and its causes or consequences.

7.4 The Board also recognised that the political context on race issues differs in the three nations where the Commission works. The Welsh government is currently discussing its anti-racism strategy, and the UK government was shortly intending to respond to the independent Commission on Race and

Ethnic Disparities. The Scotland Commissioner noted that significant work had taken place in Scotland in 2019 on higher education and race and asked that this be referred to in future work. The Chief Executive agreed that the Commission should work with the governments in all three nations, while ensuring a consistent approach across the organisation. Forthcoming internal governance changes would facilitate this and provide better support to the Scotland and Wales Committees.

Action: Chief Strategy and Policy Officer to ensure that activity to tackle race discrimination is factored into future business planning and brought back to the Board in January; and that the language used on race issues in future Commission publications reflect Board views.

7.5 The Board welcomed the proposal to hold a private round table to discuss race issues with external experts. There were various ways this could be done and Board members' input was requested so that the Commission could demonstrate thought leadership in this important area of work.

Action: Chief of Staff to collate Board members' suggestions for the roundtable event.

8. Any other business

8.1 The Chairwoman encouraged Board members to attend a voluntary presentation from 'More in Common' on 2 December.

8.2 Board members were advised that the second day of this Board meeting would take place in person on 1 December at the Commission's London office.